In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 880

EMMANUAL BLAZ MRKONJIC-RUZIC, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on October 24, 1968. A petition for rehearing was denied on December 2, 1968. The petition for a writ of certiorari was filed on December 28, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

331-417—69

QUESTIONS PRESENTED

1. Whether petitioner's false statements to the Immigration and Naturalization Service that he had never used an alias constituted "false statements" under 18 U.S.C. 1001.

2. Whether the trial court's reprimands of defense counsel deprived petitioner of a fair trial.

STATEMENT

After a trial by jury in the United States District Court for the Northern District of California, petitioner was convicted of making false statements in a matter within the jurisdiction of the Immigration and Naturalization Service, in violation of 18 U.S.C. 1001. He was sentenced to 5 years' imprisonment pursuant to the provisions of 18 U.S.C. 4208 (b) and (c). The court of appeals affirmed the conviction, *per curiam* (Pet. App. B).

Petitioner, a Yugoslav immigrant, lawfully entered the United States through Canada in 1954 (R. 247).[1] Upon his arrival, he entered the Croatian Franciscan Monastery in Washington, D.C., but left shortly thereafter (R. 456, 459–460). In 1955, while visiting a convent in Quebec, petitioner purloined the Index of Studies (the Yugoslavian counterpart of a certified transcript from an American university) issued by the University of Zagreb Catholic Theological Faculty to one Sister Ignacija (nee Matija Bajonic) (R. 137, 138, 145, 620–621). Subsequently, petitioner translated the Index into English, altered the name

[1] "R." denotes the Record in the court below, which has been lodged with the Clerk of this Court.

on the Index to conform to his then-current alias, and substituted a photograph of himself for that of Sister Ignacija. Using this Index as evidence of his past academic achievements, petitioner obtained entrance to various institutions of higher education in this country, such as Texas Christian University, the University of California, and Stanford University, and to the Mary Knoll Seminary, whence he "voluntarily" departed upon being exposed as an imposter (R. 34–35, 43, 51, 173, 193, 203, 490, 499–501). Among the names petitioner assumed during the period from his entrance into the country until his arrest were Brother Blaise C. Ruzic (Catholic University, R. 535); Rev. Emmanuel B. Ruzic (during a sojourn in southern California, R. 597); Professor Emmanuel B. Ruzic (Texas Christian University, R. 597); Manuel Blaz Ruzic (Stanford University, R. 34); and E. B. Roseman and Kraljich, under which he received mail at various times (R. 612, 657).

Petitioner came to the Immigration and Naturalization Service office in Sacramento, California, on June 17, 1965; there he applied to file a petition for naturalization and lodged his completed questionnaire (INS Form N–400) (R. 284, 286). In the questionnaire, which was subscribed under oath, petitioner gave his name as Emmanuel Blaz Mrkonjic-Ruzic (R. 287, 289, 290), and in response to a question asking what other names which he may have used, stated "none" (R. 291). When interviewed under oath by an Immigration and Naturalization officer,

petitioner orally denied ever having utilized a name other than the one set forth in the application form (R. 291).

At his subsequent trial for violation of Section 1001, petitioner did not dispute that his statements were false. Rather, he contended that they were not material, since the Service was aware of the aliases he had employed since entering the United States.

ARGUMENT

1. 18 U.S.C. 1001 proscribes the making of any "false, fictitious or fraudulent statements or representations" "in any matter within the jurisdiction of any department or agency of the United States." The purpose of the statute is "to protect the authorized functions of governmental departments and agencies from perversion which might result from * * * deceptive practices * * *". *Gilliland* v. *United States,* 312 U.S. 86, 93; see also *United States* v. *Adler,* 380 F. 2d 917, 922 (C.A. 2), certiorari denied, 389 U.S. 1006; *Frazier* v. *United States,* 267 F. 2d 62, 65 (C.A. 1); *Pitts* v. *United States,* 263 F. 2d 353, 358 (C.A. 9), certiorari denied, 360 U.S. 935; *United States* v. *Philippe,* 173 F. Supp. 582 (S.D.N.Y.). Here petitioner does not dispute that he knowingly and wilfully withheld information from the Immigration and Naturalization Service by means of his false negative responses to questions propounded. He argues that a simple negative response is not a "statement" within the purview of the statute. It is evident, however, that a denial made in the course of seeking some benefit from the government can pervert its functions

as much as an affirmative misstatement. By his denial that he had used other names, petitioner sought to keep the government from discovering his activities under those other names—activities which would have shown that he was not a fit candidate for citizenship. Thus, the denial was properly found to have been material to the INS's processing of his application.

The circuit and district courts have found false denials, whether oral or written, to be "statements" proscribed by Section 1001 in the following contexts: (1) false denial of a criminal record in applying for a government job: *Blake* v. *United States,* 323 F. 2d 245 (C.A. 8); *Pitts* v. *United States,* 263 F. 2d 353 (C.A. 9), certiorari denied, 360 U.S. 935; *United States* v. *Giarraputo,* 140 F. Supp. 831 (E.D.N.Y.); (2) false denial of membership in or association with the Communist Party in applying for a government job: *Odgen* v. *United States,* 303 F. 2d 724 (C.A. 9); *Frasier* v. *United States,* 267 F. 2d 62 (C.A. 1); Cf. *Hupman* v. *United States,* 219 F. 2d 243 (C.A. 6), certiorari denied, 349 U.S. 953; (3) false denial of a material fact in an Immigration and Naturalization proceeding initiated by the defendant: *Tzantarmas* v. *United States,* decided October 17, 1968, No. 22,798 (C.A. 9), petition for a writ of certiorari pending, No. 1266 Misc., this Term. Cf. *United States* v. *Larocca,* 245 F. 2d 196, 199 (C.A. 3).

The line of cases on which petitioner relies as holding that Section 1001 does not apply to exculpatory negative answers, *e.g., Paternostro* v. *United States,*

311 F. 2d 298 (C.A. 5),[2] is inapplicable here. In each of those cases, the false denial was made to law enforcement officials in the course of an investigation directed against the defendant. The distinguishing feature of such cases is that the defendant neither initiated the contact with the investigation agency, nor was seeking any form of governmental privilege or benefit (see 311 F. 2d at p. 309). Petitioner here was not being questioned as a suspect under investigation when he gave his false answers; he was affirmatively seeking the benefits of naturalization. Thus, no conflict exists.

2. Petitioner also argues that the district judge deprived him of a fair trial by allegedly improper and prejudicial comments directed at defense counsel, and adverts to several discussions between defense counsel and the court, and remarks directed at defense counsel by the court. This question was fully aired in the court of appeals. In any event nothing was said in the presence of the jury which amounted to more than a mild reprimand for obstreperous and vexatious conduct. On two occasions when the court repri-

[2] See also *Friedman* v. *United States*, 374 F. 2d 363 (C.A. 8); *United States* v. *Allen*, 193 F. Supp. 954 (S.D. Cal.); *United States* v. *Davey*, 155 F. Supp. 175 (S.D.N.Y.); *United States* v. *Levin*, 133 F. Supp. 88 (D. Col.); *United States* v. *Stark*, 131 F. Supp. 190 (D. Md.). But see *United States* v. *McCue*, 301 F. 2d 452 (C.A. 2), certiorari denied, 370 U.S. 939 (volunteered false denial by one who was the object of a criminal investigation held to be a false statement).

manded counsel more severely for conduct which it found unprofessional, it first excused the jury (R. 28–30, 435–440). In these circumstances, petitioner was not prejudiced.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JANUARY 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969